

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: NORTHWOOD HOTEL VENTURES, LLC NPDES Permit Discharge Authorization Number: IA-18533-18309	ADMINISTRATIVE CONSENT ORDER 2012-WW-03
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TO: Northwood Hotel Ventures, LLC
100 S. 5th Street, Suite 1400
Minneapolis, MN 55402

Northwood Hotel Ventures, LLC
c/o C T Corporation System
500 East Court Avenue
Des Moines, IA 50309

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Northwood Hotel Ventures, LLC (Northwood) hereby agree to the following Administrative Consent Order (Order). Northwood agrees to comply with all applicable requirements of NPDES General Permit No. 2 and pay an administrative penalty of \$2,000.00 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jeremy Klatt
Iowa Department of Natural Resources
2300 15TH St. SW, Box 1443
Mason City, Iowa 50401
Ph: 641/424-4073

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-5965

Payment of penalty to:

Director of the Iowa DNR
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 503219-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorizes the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The Department and Northwood hereby agree to the following statement of facts:

1. Northwood is the owner of a facility located at Township 100, Section 29, Range 21 W, in Worth County, Iowa. This facility currently consists of a newly built Holiday Inn Express hotel and associated infrastructure.
2. Prior to construction, Northwood obtained required coverage under National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 through the Department, and was assigned NPDES No. IA-18533-18309. General Permit No. 2 coverage for this facility expired on May 17, 2011.
3. On October 27, 2010, Environmental Specialist Jeremy Klatt of Department Field Office 2 inspected the site for permit compliance.
4. On October 29, 2010, the Department sent Northwood a Notice of Violation (NOV) letter based on deficiencies discovered during Mr. Klatt's inspection. Among these deficiencies was Northwood's failure to conduct and document weekly inspections of the site as required under General Permit No. 2.
5. On May 26, 2011, Department Environmental Specialist Senior Eric Wiklund conducted a storm water inspection of the site. Because Northwood was unable to produce its required storm water pollution prevention plan (SWPPP) during the inspection, Mr. Wiklund conducted a follow up inspection on May 31, 2011.
6. Based on Mr. Wiklund's findings, the Department issued Northwood a second NOV on May 31, 2011. The NOV again noted Northwood's failure to conduct and document weekly inspections of the site. In addition, final stabilization of the site had not been achieved, yet Northwood's coverage under General Permit No. 2 had expired on May 17, 2011.

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IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and 567 IAC 64.

2. Subrule 60.2 defines "Storm water" as "storm water runoff, snow melt runoff and surface runoff and drainage." It defines "Storm water discharge associated with industrial activity" to cover "the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." Number 10 under this definition specifically encompasses "construction activity including clearing, grading and excavation activities."

3. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for storm water point sources which require an NPDES permit under Section 402(p) of the Clean Water Act and 40 CFR 122.26. The NPDES General Permit No. 2 is such a permit.

4. 567 IAC 64.3(1) provides that no one shall operate a wastewater disposal system "without, or contrary to any condition of, an operation permit issued by the director." General Permit No. 2 is "an operation permit issued by the director."

5. General Permit No. 2, Part IV, subsection D.4 requires inspection of "disturbed areas of the construction site that have not been finally stabilized at least once every seven calendar days" and requires that the details of the inspections (date, person conducting inspection, etc.) be documented. Northwood has violated these conditions of General Permit No. 2 by failing to conduct and document weekly site inspections. Northwood's violations of subsection D.4 of this permit are a violation of IAC Subrule 64.3(1).

6. Northwood's coverage under General Permit No. 2 expired on May 17, 2011. Because final stabilization of the site had not yet been achieved, and a "Notice of Discontinuation" had not been submitted to the Department, Northwood was required to have permit coverage at the time of the May 31, 2011 inspection. Northwood's failure to maintain permit coverage through completion of the project is an additional violation of Subrule 64.3(1).

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V. ORDER

THEREFORE, the Department hereby orders and Northwood agrees to the following:

1. Northwood shall pay to the order of the Department an administrative penalty of \$2,000.00 within 30 days of receipt of this Order.
2. Northwood shall immediately comply with all conditions of NPDES General Permit No. 2.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

ECONOMIC BENEFIT: Northwood avoided costs associated with conducting weekly inspections estimated at \$125.00.

GRAVITY: Weekly inspections ensure that required measures for controlling storm water and sediment are in place, are effective, and are properly maintained. Failure to conduct these inspections through the life of a project is a serious infraction. Therefore, \$875 is assessed for this factor.

CULPABILITY: Northwood is a development company that should have a thorough understanding of permit requirements. In addition, Northwood was specifically made aware of the inspection requirement during the October 2010 site inspection and subsequent NOV. Failure to comply with this requirement after a direct warning appears to be a willful violation of the law. Therefore, \$1,000.00 is assessed for this factor.

The total penalty calculation comes to \$2,000.00.

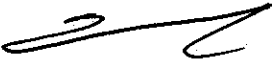
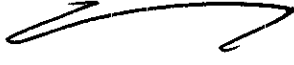
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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Northwood. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

 
Dated this 14th day of February, 2012



ROGER L. LANDE
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 8th day of February, 2012